**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A17-0069**

State of Minnesota,
Respondent,

vs.

Michael Andre Byrd,
Appellant.

**Filed November 20, 2017**
**Affirmed**
**Reilly, Judge**

St. Louis County District Court
File No. 69DU-CR-15-476

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Kristen E. Swanson, Assistant County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Reilly, Judge; and Reyes, Judge.

**U N P U B L I S H E D  O P I N I O N**

**REILLY**, Judge

On appeal from his conviction of two counts of controlled-substance crime in the first degree, appellant Michael Byrd argues that the district court erred by denying his

suppression motion because the evidence was obtained with a warrant issued without probable cause. We affirm.

## FACTS

During January 2015, a confidential reliable informant (CRI) told Duluth police about two men from Chicago, one of whom was later identified as appellant, who were selling cocaine and heroin at a West Duluth apartment. Over the course of a month, police conducted a series of controlled drug buys at the West Duluth apartment. Based on this information, on February 11, 2015, police obtained a search warrant from the district court for the West Duluth apartment. A short time later that day, the same CRI told police that appellant was not at the West Duluth apartment and was instead at an East Duluth apartment with drugs available for sale. Police conducted brief surveillance at the new location and observed appellant entering the building. Based on the CRI's tip, the CRI's reliable information about the West Duluth apartment, and their brief surveillance, police obtained an updated warrant to search the East Duluth apartment. Upon executing the warrant, police discovered evidence of drugs packaged for sale and other materials used in the drug trade. The state charged appellant with two first-degree controlled-substance crimes.

Appellant moved the district court to suppress the evidence obtained in the search, arguing the warrant lacked probable cause. The district court denied appellant's motion to suppress. Following a stipulated-facts trial pursuant to Minnesota Rule of Criminal Procedure 26.01, subdivision 4, the district court found appellant guilty of two counts of controlled-substance crime in the first degree.

Appellant appeals.

## D E C I S I O N

### I.

Appellant challenges the district court's conclusion that the warrant authorizing the search of the East Duluth apartment was supported by probable cause. The United States and Minnesota Constitutions protect citizens from unreasonable searches and seizures, providing that no warrant shall be issued without a showing of probable cause. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. Probable cause exists if "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Carter*, 697 N.W.2d 199, 204-05 (Minn. 2005) (quotation omitted).

A search warrant may be issued by a neutral and detached magistrate only upon a finding of probable cause. *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999). An issuing judge may draw common-sense and reasonable inferences from the facts in the warrant affidavit. *State v. Holiday*, 749 N.W.2d 833, 843 (Minn. App. 2008) (quotation omitted). When determining whether probable cause existed, the appellate court does not engage in de novo review. *State v. McGrath*, 706 N.W.2d 532, 539 (Minn. App. 2005), *review denied* (Minn. Feb. 22, 2006). This court grants "great deference" to an issuing judge's finding of probable cause. *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985).

"An appellate court reviews a district court's decision to issue a warrant only to consider whether the issuing judge had a substantial basis for concluding that probable cause existed." *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). A substantial basis exists when there is a "fair probability that contraband or evidence of a crime will be found

in a particular place." *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quotation omitted). Courts err on the side of issuing warrants in "doubtful or marginal" cases to avoid "discouraging police from seeking review by a neutral and detached magistrate." *State v. Ruoho*, 685 N.W.2d 451, 456 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004).

Appellant first argues that the district court erred by not suppressing the evidence obtained during the search of the East Duluth apartment, because an insufficient nexus existed between the alleged illegal activity at the West Duluth apartment and the East Duluth apartment. Appellant claims that the controlled buys and observation of drug dealing at the West Duluth apartment cannot show that criminal activity occurred at the East Duluth address, because those activities were never observed at the second location.

To find probable cause, a "direct connection" or "nexus" must exist between the alleged criminal activity and the location to be searched. *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014). Direct observation of evidence of a crime at the place to be searched is not required. *See Harris*, 589 N.W.2d at 788-89. A nexus may be inferred by the totality of the circumstances. *Id.* at 790-91. A number of circumstances inform a judge's determination of whether a nexus exists, including: the type of crime, the nature of the items sought, the extent of a defendant's opportunity for concealment, and normal inferences about where a defendant would usually keep such items. *State v. Pierce*, 358 N.W.2d 672, 673 (Minn. 1984).

Here, the basis of the warrant for the West Duluth apartment included the CRI's tip and the corroborating drug buys. Appellant participated in two of those buys at the West

Duluth apartment. Appellant was known to be from Chicago and was not a Duluth resident. Appellant's only apparent reason for being in Duluth was to sell drugs, and police actually observed appellant selling drugs out of an apartment. There is a fair probability that appellant's reason for moving to a different apartment is the same—to sell drugs. Context, coupled with the CRI's tip that appellant had drugs for sale at the East Duluth apartment, establishes a substantial basis for the judge to believe that evidence of a crime would be discovered at the East Duluth apartment.

Appellant also argues that the East Duluth apartment was not appellant's "residence" for the purposes of the drug-wholesaler probable-cause presumption. *See Yarbrough*, 841 N.W.2d at 623 (describing reasonable presumption that a drug wholesaler keeps drug evidence at their residence). Because this court finds a substantial basis for probable cause independent of the drug-wholesaler presumption, we decline to address appellant's argument.

**II.**

Appellant next argues that the search warrant affidavit did not adequately detail the CRI's basis of knowledge for criminal activity at the East Duluth apartment, and that the CRI's tip should not be considered for the district court's finding of probable cause. Police may rely on a CRI's information if it is shown to be sufficiently reliable. *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). To determine reliability, courts consider both the CRI's veracity and the basis of his or her knowledge as presented in the warrant affidavit. *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998).

Veracity is properly considered alongside the CRI's basis of knowledge as part of the totality of the circumstances. *See Holiday*, 749 N.W.2d at 840 (describing veracity and basis of knowledge as "closely intertwined issues"). Minnesota courts consider six factors when determining a CRI's veracity: (1) whether a CRI is a first-time CRI; (2) whether the CRI has provided reliable information in the past; (3) whether police can corroborate the information provided by the CRI; (4) whether the CRI came forward voluntarily; (5) "in narcotics cases, 'controlled purchase' is a term of art that indicates reliability"; and (6) whether the CRI makes a statement against the CRI's penal interest. *State v. Ross*, 676 N.W.2d 301, 304 (Minn. App. 2004).

In this case, the district court determined the CRI was reliable, and the parties agree on the CRI's veracity. The warrant affidavit describes how in the past the CRI provided information to police resulting in four arrests for the sale of controlled substances. Three of the CRI's past tips also resulted in search warrants where police located controlled substances and other evidence of drug sales and distribution. Pertinent to this case, the CRI's tip about the West Duluth apartment was confirmed by police through a series of controlled drug buys. Viewing the totality of the circumstances, a substantial basis exists to establish the CRI's veracity.

Veracity alone cannot establish probable cause—information provided by a CRI must still show a basis of knowledge. *State v. Cook*, 610 N.W.2d 664, 668 (Minn. App. 2000), *review denied* (Minn. July 25, 2000). Appellant argues that the warrant affidavit contains no information describing the CRI's basis of knowledge for appellant's criminal activity at the East Duluth apartment.

In assessing a CRI's basis of knowledge, the issuing judge should consider (1) the "quantity and quality of detail in the CRI's report," and (2) "whether police independently verified important details of the [CRI's] report." *Id.* (citing *Alabama v. White*, 496 U.S. 325, 331-32, 110 S. Ct. 2412, 2417 (1990)). Under the totality-of-the-circumstances test, we will not view the CRI's basis of knowledge in a hyper technical fashion. *See, e.g.*, *Wiley*, 366 N.W.2d at 269; *State v. Quinn*, 436 N.W.2d 758, 763 (Minn. 1989) (reviewing search warrants in a practical, commonsense manner). Though recent personal observation of illegal activity by a CRI is the preferred way to show basis of knowledge, *Wiley*, 366 N.W.2d at 269, "basis of knowledge may also be supplied indirectly through self-verifying details that allow an inference that the information was gained in a reliable way" and is not based on reputation or rumor, *Cook*, 610 N.W.2d at 668. Basis of knowledge and veracity "should not be understood as entirely separate and independent requirements to be rigidly exacted in every case" but instead "as closely intertwined issues that may usefully illuminate the commonsense, practical question [of] whether there is 'probable cause' to believe that contraband or evidence is located in a particular place." *Holiday*, 749 N.W.2d at 840 (quoting *Illinois v. Gates*, 462 U.S. 213, 230, 103 S. Ct. 2317, 2328 (1983) (internal quotations omitted)).

Here, the affidavit accompanying the search warrant stated the CRI told police that appellant was no longer at the West Duluth address and was currently in possession of cocaine and heroin for sale elsewhere. On its own, this information might fail to provide the "quality of detail" needed to establish basis of knowledge. *Cook*, 610 N.W.2d at 668. However, we do not view portions of the warrant affidavit in isolation; we engage in

practical inquiry of the totality of the circumstances. *See, e.g., Wiley*, 366 N.W.2d at 269. First, police observed appellant entering the East Duluth apartment, which "independently verified" the CRI's tip. *Cook*, 610 N.W.2d at 664. Second, not only was the CRI deemed reliable in the past by providing corroborated information to police, but the CRI also proved reliable to police in the present case. The CRI's corroborated knowledge of drug activity at the West Duluth address allows a judge to draw the inference that the CRI's information on the East Duluth address came from the same source. *See Ross*, 676 N.W.2d at 304 (holding that totality of the circumstances can show a CRI's basis of knowledge).

Appellant next argues that the CRI's tip about appellant's location at the East Duluth apartment does not contribute to the CRI's reliability, because a person's general location is information that is easily obtained. Easily obtained information about a person's present location is relatively ineffective toward establishing a CRI's credibility. *See, e.g.*, *Cook*, 610 N.W.2d at 669 (holding that a CRI's description of defendant's present location at a YMCA and outward physical appearance were easily ascertainable by anyone and did not demonstrate any basis of knowledge for knowing about a drug sale).

In this case, the CRI told police that appellant moved to the East Duluth apartment with drugs available for sale. Appellant's presence at the East Duluth apartment is more specific knowledge because the apartment itself is not a public space that is as freely observable to the public as the YMCA parking lot in *Cook*. Also, appellant is not a Duluth resident, so his whereabouts might be more difficult to ascertain than an individual who was "at home" and might have routine activities.

Appellant next argues that the CRI's information about appellant's location is not predictive of future behavior, so should not be lent any special weight. CRIs are deemed more reliable if they supply information that correctly predicts future behavior. *See Ross*, 676 N.W.2d at 305 (holding that a CRI's corroborated prediction of future behavior was key to finding probable cause). This court concludes there was a sufficient showing for basis of knowledge from the warrant affidavit, so we decline to consider whether the CRI's information deserves special consideration for predicting future behavior.

Finally, appellant notes that a warrant to search the East Duluth apartment based on appellant's observed illegal activity during the West Duluth drug buys does not give police probable cause to search any location appellant might later occupy. Police did not obtain a warrant to search any location appellant might later occupy, only the East Duluth address, which was based on police observation that appellant was at that address based on a tip from a CRI.

We therefore conclude that the district court judge who signed the search warrant had a substantial basis to find probable cause, and the district court judge who reviewed the warrant in the suppression hearing did not err in denying the motion to suppress the evidence.

**Affirmed.**